INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	5
Conclusion	17
Appendix	18

CITATIONS

Cases:

Allen v. *Burlington, C. R. & N. R. Co.*, 57 Iowa 623	14
Atlantic Cleaners & Dyers v. *United States*, 286 U. S. 427	13
Boston Sand Co. v. *United States*, 278 U. S. 41	13
Brady v. *Chicago & G. W. Ry. Co.*, 114 Fed. 100	7
Brailas v. *Shepard SS Co.*, 152 F. 2d 849, certiorari denied, 327 U. S. 807	7
Craige v. *Austin Powder Co.*, 91 F. 2d 664	7
Cropper v. *United States*, 81 F. Supp. 81	16
Doke v. *United Pacific Insurance Co.*, 15 Wash. 2d 536	12
Foster v. *United States*, 43 C. Cl. 170	8
Fries v. *United States*, 170 F. 2d 726, certiorari denied, 336 U. S. 954	16
Globe Indemnity Co. v. *Forrest*, 165 Va. 267	12
Hunt v. *United States*, 38 C. Cl. 704	8
King v. *Anthony*, Canada Law Reports (S. C. 1946) 569	16
Lamb v. *Interstate SS Co.*, 149 F. 2d 914	7
Long v. *United States*, 78 F. Supp. 35	16
Mesker v. *Bishop*, 56 Ind. App. 455	14
Mid-Continent Pipe Line Co. v. *Whiteley*, 116 F. 2d 871	7
Mitchell v. *Cohen*, 333 U. S. 411	14
Murphey v. *United States*, 78 F. Supp. 925	16
P. F. Collier & Son Co. v. *Hartfeil*, 72 F. 2d 625	7
Phelps v. *Boone*, 67 F. 2d 574, certiorari denied, 291 U. S. 677	7
Rutherford v. *United States*, 73 F. Supp. 867, affirmed *per curiam*, 168 F. 2d 70	16
Sanchez v. *United States*, 177 F. 2d 452	16
Standard Oil Co. v. *Anderson*, 212 U. S. 215	7
Standard Oil Co. v. *Parkinson*, 152 Fed. 681	7
United States v. *Campbell*, 172 F. 2d 500, certiorari denied, 337 U. S. 957	16
United States v. *Dickerson*, 310 U. S. 554	13

Cases—Continued

	Page
United States v. *Hendee*, 124 U. S. 309	13
United States v. *Mouat*, 124 U. S. 303	13
United States v. *Williamson*, 23 Wall. 411	8
Statutes:	
Act of September 27, 1944, 58 Stat. 752	12
Act of August 2, 1946, 60 Stat. 858, 37 U. S. C. 112	9
Act of June 25, 1948, effective September 1, 1948 (Public Law 773, 80th Cong., 2d sess.), Sec. 39	2
Federal Tort Claims Act (60 Stat. 842, 28 U. S. C. 921 *et seq.*):	
Sec. 402 (b)	15, 18
Sec. 402 (c)	11, 14, 15, 18
Sec. 410 (a)	6, 18
28 U. S. C. 1291	2
28 U. S. C. 1346	2
28 U. S. C. 1402	2
28 U. S. C. 1504	2
28 U. S. C. 2110	2
28 U. S. C. 2401	2
28 U. S. C. 2402	2
28 U. S. C. 2411	2
28 U. S. C. 2412	2
28 U. S. C. 2671–2680	2
Miscellaneous:	
Air Force Manual, No. 173–4, ch. 2, par. 17 (c) (1)	8
16 Comp. Dec. 611, 616	8
Decisions of the Administrator of Veterans Affairs, Vol. 1, p. 1470	12
Hearings before the House Committee on the Judiciary, 77th Cong., 2d sess. on H. R. 5373 and H. R. 6463, p. 7	15
H. Rep. 667, 69th Cong., 1st sess., p. 6, on S. 1912	15
H. Rep. 286, 70th Cong., 1st sess., pp. 6–7, on H. R. 9285	15
H. Rep. 2800, 71st Cong., 3d sess., pp. 12–13, on H. R. 17168	15
32 Op. A. G. 12 (1919)	12
Special Regulations (Army) No. 35–4805–1	8

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 526

L. HOLMES ELEAZER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The findings of fact, conclusions of law, and order for judgment of the United States District Court for the Eastern District of South Carolina (R. 16–31) are not reported. The opinion of the Court of Appeals for the Fourth Circuit (R. 33–40) is reported at 177 F. 2d 914.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on November 7, 1949 (R. 40). The petition for a writ of certiorari was filed on January 3, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

An official change-of-station order was issued to a marine lieutenant detaching him from his post at Cherry Point, N. C., and directing him to proceed to Corpus Christi, Texas, without specifying any particular means of transportation by which the travel was to be performed. The order also authorized the lieutenant to take several days' leave of absence before reporting to his new post. Availing himself of this leave, he left Cherry Point in his own car for his home in Atlanta, Georgia.

The question presented is whether, under the Federal Tort Claims Act, the United States has assumed liability for damages caused to a third person by the lieutenant's negligent operation and maintenance of his privately owned car while en route to his home for the purpose of spending his leave.

STATUTE INVOLVED

The pertinent provisions of the Federal Tort Claims Act are set forth in the Appendix, *infra* pp. 18–19.[1]

[1] The Federal Tort Claims Act (60 Stat. 842, 28 U. S. C. 921 *et seq.*) was repealed, and its provisions were revised and reenacted into law as 28 U. S. C. 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671–2680 by the Act of June 25, 1948, effective September 1, 1948 (Pub. Law 773, 80th Cong., 2d sess.). Section 39 of the repealing act provides that existing rights and liabilities shall not be affected by the repeal. Since the case at bar arose prior to the repeal, it appears that any rights which petitioner may have against the United States

STATEMENT

On August 20, 1946, Lt. James B. Talley, who had been stationed at the Marine Corp Air Station in Cherry Point, N. C., received an order to report to a station at Corpus Christi, Texas (R. 10). The order authorized him to delay in reporting until September 1, 1946, "such delay to count as leave" (R. 10).[2] Talley accordingly left Cherry Point on August 20, driving his own car, "en route to [his] home in Atlanta, Ga., where [he] intended staying until such time as was necessary for [him] to proceed in order to report to [his] next duty station in accordance with [his] orders" (R. 10).

Shortly after he left Cherry Point, and while applying his brakes in the process of overtaking a vehicle ahead of him, Talley's car swerved to the left side of the road and hit petitioner's oncoming automobile (R. 20). As a result of the collision, petitioner suffered physical injuries. Since these injuries had occurred during the course of his employment by the F. B. I., the United States, under the Federal Employees' Compensation Act, paid petitioner's medical and hospital expenses amounting to $2,780.35 (R. 31).

herein, are governed by the Federal Tort Claims Act as it existed at the time of the repeal. It is the former provisions of the Act, therefore, which are set out in the Appendix, *infra*, pp. 18–19.

[2] The order is reprinted in the court's findings of fact (R. 17–19).

Petitioner then brought this suit against the United States under the Federal Tort Claims Act (R. 1–3). His complaint alleged that his injuries were caused by the negligence and carelessness of Lt. Talley, an employee of the United States, who "while acting within the scope of his employment and in line of duty," operated his car "at a high and dangerous rate of speed * * * on a wet pavement with worn and defective tires * * * without having the same under reasonably safe and proper control or equipped with proper and adequate brakes and other mechanism for the safe operation thereof" (R. 3).

The United States filed an answer denying that Talley was negligent and alleging that petitioner was contributorily negligent (R. 4–6). As a separate defense, the United States alleged that Lt. Talley "was on leave of absence, traveling to his home * * * at the time and place of the accident * * * [and] * * * was not acting within the course and scope of his employment for the defendant and was not acting in line of duty at such time and place" (R. 5).

Subsequent examination of the Talley car showed that the right front and rear tires were "slick—no tread on them," that there was loose grease under the brake drums and bands, and that "the right rear wheel contain[ed] very much grease, which was caused from a bad, defective grease retainer" (R. 11, 12). It was also shown that there had been a heavy rain the day of the

accident so that the highway was very wet (R. 3, 11). Petitioner's expert witness testified that the effect of "putting on the brakes on a slick surface of this smooth tire and this brake situation" would be to cause the car "to swerve to the left" (R. 13).

After the trial, the district court, in addition to finding that petitioner's injuries were proximately caused by Lt. Talley's negligence, and that there was no negligence on the part of petitioner, concluded that "Lt. Talley's negligence is imputable" to the United States because "Lt. Talley was acting in line of duty at the time of plaintiff's injuries" (R. 30). It entered judgment against the United States in the sum of $30,000, less the costs of medical and hospital expenses which the United States had already paid under the Federal Employees' Compensation Act (R. 31).

On appeal, the court below applied the conventional *respondeat superior* test and held that in selecting and driving his own automobile to his home for the enjoyment of his leave, Lt. Talley was acting in furtherance of his own purposes and not within the scope of his employment for the Government. It accordingly reversed the judgment of the district court and directed the entry of judgment for the United States (R. 40).

ARGUMENT

Petititoner's chief contention is that Lt. Talley was acting within the scope of his employment at

the time of the accident. He also argues that at the least he is entitled to a judgment against the United States on the theory that the Lieutenant was "in line of duty" at the time of the accident.[3] The decision of the court below rejected both contentions. Since that decision is sound and presents no conflict, we submit that review here by writ of certiorari is unwarranted.

1. Under Section 410 (a) of the Federal Tort Claims Act the United States, in assuming liability for the tortious misconduct of its employees, has assumed such liability only where the employee committed the tort "while acting within the scope of his office or employment." See Appendix, *infra*, pp. 18–19. The Act thus incorporates the conventional *respondeat superior* principle under which a master is made to answer for the negligence of his servants while acting within the scope of their employment, but under which he may not be held responsible for torts committed outside the scope of that employment.

It is familiar law that the *respondeat superior* liability may be imposed only where the master-

[3] Petitioner also intimates, in support of his contentions, that "because this is a suit against the Government," the court below "strictly construed" the Federal Tort Claims Act against him (Pet. 12). However, as petitioner is fully aware, the theory of strict construction was neither urged nor even suggested by respondent in the proceedings before the court below. Nor does the opinion of that court justify the intimation that it relied on any theory of strict construction. To the contrary, that opinion makes it clear that the court below decided the case "just as though [the United States] were a private person" (R. 38).

servant relationship is shown to have existed at the time of the injury and with respect to the very transaction out of which the injury arose. *Brailas* v. *Shepard SS Co.*, 152 F. 2d 849, 850 (C. A. 2), certiorari denied, 327 U. S. 807; *Lamb* v. *Interstate SS Co.*, 149 F. 2d 914, 917 (C. A. 6); *Mid-Continent Pipe Line Co.* v. *Whiteley*, 116 F. 2d 871 (C. A. 10). That relationship, in turn, as observed by the court below (R. 35), can exist only where (a) the employee was engaged on the employer's affairs, and (b) the latter has the right and power to direct and control the employee in the performance of the negligent act or omission which caused the injury. See *Standard Oil Co.* v. *Anderson*, 212 U. S. 215, 221; *Phelps* v. *Boone*, 67 F. 2d 574 (C. A. D. C.), certiorari denied, 291 U. S. 677; *Craige* v. *Austin Powder Co.*, 91 F. 2d 664 (C. A. 4); *P. F. Collier & Son Co.* v. *Hartfeil*, 72 F. 2d 625 (C. A. 8); *Standard Oil Co.* v. *Parkinson*, 152 Fed. 681, 682 (C. A. 8); *Brady* v. *Chicago & G. W. Ry. Co.*, 114 Fed. 100 (C. A. 8).[4] Neither of those two factors is present here.

a. The facts of this case fully establish that at the time of the accident, Lt. Talley, as stated by the court below, was "acting in furtherance of his own purposes, not those of the government"

[4] Despite petitioner's assertion to the contrary (Pet. 5, 8, 11), the pertinent North Carolina decisions, as has been pointed out by the court below (R. 37–38), also accord with the federal rule.

(R. 34–35). Talley had been detached from his Cherry Point post and directed to report to Corpus Christi. His travel orders allowed, but certainly did not compel, him to take several days' leave before reporting to his new post. Talley decided, for his own use and personal benefit, to take that leave, to spend it at home in Atlanta, and to use his own car to get there. The leave actually "suspended the execution of the order for change of station, and [it is only] at the expiration of the leave [that] the officer comes under operation of the order." Special Regulations (Army) No. 35–4805–1 and Air Force Manual No. 173–4, ch. 2, par. 17 (c) (1).

An officer on leave is not engaged in the business of the United States. This Court has stated that while on leave, "the officer is at liberty to go where he will during the permitted absence, to employ his time as he pleases, and to surrender his leave if he chooses." *United States* v. *Williamson,* 23 Wall. 411, 415. The leave is a favor extended "for his sole accommodation" to permit him to enjoy "a respite from military duty." *Foster* v. *United States,* 43 C. Cl. 170, 175. "A leave of absence or a furlough is a favor extended. A soldier can not have a furlough forced upon him." *Hunt* v. *United States,* 38 C. Cl. 704, 710. The Government is not interested in where an officer spends his leave, nor how he employs his time during his leave. See 16 Comp. Dec. 611, 616. He could, as far as the Government is concerned, have spent it at Cherry Point, or in Maine, or in California, or at any other place, or not

taken it at all. Likewise, he could have made any arrangements he desired to arrive at the chosen leave destination (R. 15). Here he chose to go to Georgia by his own car. It was, of course, purely coincidental that only one road led from Cherry Point so that even though Lt. Talley was driving home on leave, he nevertheless, as petitioner states (Pet. 13) "was still on the most direct route" between Cherry Point and Corpus Christi. The important factor is that he was traveling along that road, not for the purpose of getting to Corpus Christi, but for the express purpose of going home to Atlanta to spend his leave there (R. 10). As observed by the court below, the Government can no more be held liable for Talley's negligence in operating his car than it would be for the negligent operation of a plane which he might have engaged to fly him to Maine or for the negligent operation of a train he might have boarded to get to any other leave destination (R. 36).

b. In addition to the fact that Lt. Talley was driving his car home on leave, the complete absence of control by the United States over the manner of operation of the car precludes the imposition of a *respondeat superior* liability on the United States. Here the United States left to Lt. Talley the decision as to whether a plane, train, bus or private car should be used.[5]

[5] Regardless of the mode of transportation selected by Lt. Talley, the Government would have been obligated to reimburse him at the rate of 8 cents per mile for the railroad distance between Cherry Point and Corpus Christi, had he completed that travel. Act of August 2, 1946 (60 Stat. 858, 37 U. S. C. 112).

Similarly, it was Lt. Talley alone who decided to use a private car, and who planned the route, determined the type of car, the condition of its repair, the effectiveness of its brakes and the safety of its tires.[6] Thus, Lt. Talley had the final say over the means of transportation and full control over the mechanical fitness and operation of his car. In the circumstances of this case the United States did not and could not exercise any control thereover. These factors, the court below correctly decided, permit no conclusion other than that Lt. Talley was not acting within the scope of his employment at the time of the accident.

2. Apparently recognizing that the facts of this case do not warrant holding the United States liable under the conventional *respondeat superior* test, petitioner argues that the Federal Tort Claims Act, as far as torts of military personnel are concerned, imposes a different and more extended liability than that applicable to torts of civilian employees, and makes the United States liable for the negligent conduct of military personnel, outside as well as within, the scope of their military employment. The argument ad-

[6] As petitioner alleged (R. 3) and as the evidence in this case showed, the accident occurred because "the right front and rear wheels on the Talley car was slick—no tread on them" (R. 11). Additional evidence was to the effect that the "right rear wheel contain[ed] very much grease, which was caused from a bad, defective grease retainer" (R. 12).

vanced is that Section 402 (c) the Federal Tort Claims Act defines "acting within the scope of * * * employment" to mean "acting in line of duty" in case of military personnel,[7] that the phrase "line of duty" has been construed in other statutes in a very liberal fashion so as to include conduct outside, as well as within, the "scope of employment," and that this same liberal construction must be mechanically applied to the Federal Tort Claims Act so as to make the United States liable for practically every tort committed by a soldier or sailor, even though, as far as all other federal employees are concerned, it is conceded that liability does not extend to torts outside the scope of employment (Pet. 15–17).

a. In invoking, for the purpose of the Tort Claims Act, the broad meaning given to the phrase "line of duty" in legislation granting benefits to servicemen or their dependents for an injury or death incurred during the serviceman's period of military service, petitioner ignores the basic reason for that broad meaning. Congress has broadened the "line of duty" concept in such

[7] See Appendix, *infra*, p. 18. This argument, it must be noted, fails to give any significance to the addition of the word "acting." The statutes and decisions dealing with "in line of duty" for veterans' compensation or dependency benefit purposes, upon which petitioner relies, treat it as a status, not requiring any affirmative action on the serviceman's part or close association with the principal's business such as the phrase "*acting* in line of duty" (the equivalent of "acting within the scope of * * * employment") implies. [Emphasis supplied.]

legislation to reward servicemen for the sacrifices caused by their separation from civilian life and for the understandable and desirable purpose of making benefit payments to such servicemen and their dependents in all situations except where the injury or death for which benefits are claimed (1) was the proximate result of the serviceman's own misconduct or (2) occurred while he was deserting the service or under confinement by sentence of a military or civil court. Act of September 27, 1944, 58 Stat. 752; see 32 Op. A. G. 12 (1919).[8] Thus, even injuries sustained by a soldier in the course of his remunerative employment for a private concern while he was on furlough from his military duties have been held to have been incurred in the "line of his duty" with the armed forces for the purpose of awarding him veteran's pension benefits. (Decisions of the Administrator of Veterans Affairs, vol. 1, p. 1470). It therefore follows, if the test contended for by petitioner is correct, that the United States would be liable, under the Federal Tort Claims Act, to a third person injured by that soldier's negligence in the course of his private employ. Thus while a liberal interpretation of

[8] Like considerations account for the results reached in the workmen's compensation cases cited by petitioner (*Globe Indemnity Co.* v. *Forrest*, 165 Va. 267; *Doke* v. *United Pacific Insurance Co.*, 15 Wash. 2d 536) and demonstrate their inapplicability here.

"line of duty" is justifiable to prevent a deprivation of veteran's pension benefits, there obviously is no basis for thrusting a like interpretation into totally different legislation such as the Federal Tort Claims Act. There the relationship of the serviceman to the United States is important only for the purpose of answering the question of whether the serviceman, at the time of the tort, was sufficiently about the business of the United States as to make the United States liable for his torts.

In this connection, it is appropriate to note that it is not unusual for the same words to be used with different meanings in different acts, and in fact, even in the same act. *Atlantic Cleaners & Dyers* v. *United States,* 286 U. S. 427, 433. This is especially true in legislation affecting servicemen. Thus, this Court has held that a Navy paymaster's clerk is not an "officer" within the meaning of that word as used in one statute (*United States* v. *Mouat,* 124 U. S. 303), but, in a decision handed down the same day, that such a clerk was an "officer" for the purposes of a different statute (*United States* v. *Hendee,* 124 U. S. 309). Such results, far from being inconsistent, simply effectuate the different legislative intent underlying each of the statutes. Cf. *Boston Sand Co.* v. *United States,* 278 U. S. 41, 48; *United States* v. *Dickerson,* 310 U. S. 554,

561. The phrase "line of duty" is not capable of so standard and precise a definition[9] as would permit its application "without help from the context in which it appears and the purpose for which it was inserted in the statute." *Mitchell* v. *Cohen*, 333 U. S. 411, 418–419.

b. Nothing in its legislative history warrants a carry-over to the Federal Tort Claims Act of the broadened "in line of duty" meaning. To the contrary, that history makes it reasonably clear that Congress never intended that the phrase "line of duty," in Section 402 (c), would be the means of imposing liability on the United States for torts committed by military personnel outside the scope of their employment. Congress added the phrase "line of duty" to the "scope of employment" definition in Section 402 (c), because soldiers and sailors are generally not considered to be employees of the United States and hence the phrase "scope of employment" would have uncertain and awkward application to their conduct. As observed by the court below, the "line of duty" language was "doubtless used" to

[9] Apart from veterans' benefit legislation, where there is a direct need for expanding the "line of duty" concept so as to award benefits to servicemen and their dependents, the phrase "line of duty" has frequently been restricted to acts performed in the discharge of required employment duties and has been limited to performance of the work of employment. *Allen* v. *Burlington, C. R. & N. R. Co.*, 57 Iowa 623, 627; *Mesker* v. *Bishop*, 56 Ind. App. 455, 464.

"more correctly" describe the conduct of military personnel in acting for the Government (R. 39). This was also expressly recognized by Congress in specifically defining "employee of the Government," in Section 402 (b) of the Federal Tort Claims Act, to mean "members of the military or naval forces of the United States." (Appendix, *infra,* p. 18). Further recognition was manifested in the committee reports accompanying several of the earlier tort claim bills which incorporated language similar to that appearing in Section 402 (b) and (c). See H. Rep. 667, 69th Cong., 1st sess., p. 6, on S. 1912; H. Rep. 286, 70th Cong., 1st sess., pp. 6–7, on H. R. 9285; H. Rep. 2800, 71st Cong., 3d sess., pp. 12–13, on H. R. 17168.

These definitions, it was pointed out at hearings on the predecessor bills, were inserted to "make it clear that the act covers all Federal agencies, including corporate instrumentalities, and all Federal officers and employees, *including members of the military and naval forces* and temporary and uncompensated employees." (Emphasis supplied.) Hearings before the House Committee on the Judiciary, 77th Cong., 2d sess. on H. R. 5373 and H. R. 6463, p. 7. The apt language purposely used by Congress in making certain that the Act would not be held inapplicable to torts of military personnel, should not, we submit, be wrenched "out of its context" so

as to escape the Act's emphasis in basing the liability of the United States on a normal *respondeat superior* relationship. (See *United States* v. *Campbell,* 172 F. 2d 500, 503 (C. A. 5), certiorari denied, 337 U. S. 957.)

c. On the basis of these considerations, the court below observes that it was "not impressed with [petitioner's] argument" (R. 38). All of the reported decisions in cases in which the same argument has been advanced are in accord with the court below in refusing to stretch the "line of duty" criterion of the Act so as to include conduct not within the scope of the military tortfeasor's employment. *United States* v. *Campbell,* 172 F. 2d 500 (C. A. 5), certiorari denied, 337 U. S. 957; *Rutherford* v. *United States,* 73 F. Supp. 867 (E. D. Tenn.), affirmed *per curiam,* 168 F. 2d 70 (C. A. 6); *Cropper* v. *United States,* 81 F. Supp. 81 (N. D. Fla.); *Murphey* v. *United States,* 79 F. Supp. 925 (N. D. Cal.); see also *Fries* v. *United States,* 170 F. 2d 726 (C. A. 6), certiorari denied, 336 U. S. 954; *Sanchez* v. *United States,* 177 F. 2d 452 (C. A. 10); *Long* v. *United States,* 78 F. Supp. 35 (S. D. Cal.). The Supreme Court of Canada, in interpreting a statute similar to the Federal Tort Claims Act, has also employed the normal *respondeat superior* test in determining liability of the Crown to third persons for the torts of military personnel. *King* v. *Anthony,* Canada Law Reports (S. C. 1946) 569.

CONCLUSION

The decision of the court below is correct and presents no conflict. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
MORTON HOLLANDER,
Attorneys.

FEBRUARY 1950.

APPENDIX

The pertinent provisions of the Federal Tort Claims Act (60 Stat. 842, 28 U. S. C. 931, 941), provided as follows:

SEC. 402. As used in this title, the term—

* * * * *

(b) "Employee of the Government" includes officers or employees of any Federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

(c) "Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States, means acting in line of duty.

SEC. 410. (a) Subject to the provisions of this title, the United States district court for the district wherein the plaintiff is resident or wherein the act or omission complained of occurred, including the United States district courts for the Territories and possessions of the United States, sitting without a jury, shall have exclusive jurisdiction to hear, determine, and render judgment on any claim against the United States, for money only, accruing on and after January 1, 1945, on account of damage to or loss of property or on account of personal injury or death caused by the negligent or wrongful act or omis-

sion of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred. Subject to the provisions of this title, the United States shall be liable in respect of such claims to the same claimants, in the same manner, and to the same extent as a private individual under like circumstances, except that the United States shall not be liable for interest prior to judgment, or for punitive damages. Costs shall be allowed in all courts to the successful claimant to the same extent as if the United States were a private litigant, except that such costs shall not include attorneys' fees.

U. S. GOVERNMENT PRINTING OFFICE: 1950